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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,701	03/25/2004	Philippe Msika	065691-0355	6071
23428 7590 10/06/2009 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
YU, GINA C				
ART UNIT		PAPER NUMBER		
1611				
MAIL DATE		DELIVERY MODE		
10/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/808,701

Applicant(s)

MSIKA, PHILIPPE

Examiner

GINA C. YU

Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Receipt is acknowledged of amendment filed on May 26, 2009. The claim rejections as indicated in the previous Office action dated December 23, 2009 are maintained for reasons of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 8-10, 21, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport (US 5444091) in view of Frei et al (Internat'l J. of Cosmetic Science) ("Frei").

The rejection is maintained for reasons of record.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport and Frei as applied to claims 1-6, 8-10, 21, and 22 as above, and further in view of Andary et al. (US 5719129) ("Andary")

The rejection is maintained for reasons of record.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport and Frei as applied to claims 1-6, 8-10, 21, and 22 as above, and further in view of Flick (Cosmetic and Toiletry Formulations, 1995)

The rejection is maintained for reasons of record.

Claims 12-17, 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport in view of Quelle (DE 4244418, English translation).

The rejection is maintained for reasons of record.

Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport and Quelle as applied to claims 12-17, 23, and 24 as above, and further in view of Flick.

The rejection is maintained for reasons of record.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport in view of Frei and Quelle.

The rejection is maintained for reasons of record.

Response to Arguments

Applicant's arguments filed on May 9, 2009 have been fully considered but they are not persuasive.

Applicant reiterates the inventor/declarant of the affidavit filed on under 37 C.F.R. 1.132 on November 14, 2008, and asserts a skilled artisan would not have found the present invention obvious in view of Rapaport in view of Frei. Examiner respectfully points out that the submitted statements in the declaration in this case are not evidence to rebut the present rejections, but how the inventor/declarant interprets the prior art teachings differently from the examiner.

Applicant maintains the position that Frei's teachings are at best expressions of doubts at best and does not provide positive affirmation whether soya peptide would be effective in increasing skin firmness, elasticity, and tone. Examiner respectfully disagrees the Frei study was published to express doubts of the efficacy of soya peptide in treatment of skin disorders; rather, the purpose of the article was to teach the effect of soya peptide on a dermal and skin equivalent model so that one of ordinary skill in the

art would learn potential use of this new material and further develop it into useful articles, just as applicant has done in this case. See p. 161, second paragraph. In this case, Frei teaches that soya peptide led to a stimulation of collagen formation, elastin synthesis and glycosaminoglycan synthesis. Rapaport already teaches the findings from previous studies to indicate that destruction of elastic fibers is a cause of stretchmarks and another method to treat the symptom by using retinoic acid to cause the formation of new collagen fibers and correct abnormalities in elastic fibers. See Rapaport, col. 1, lines 32-58.

In response to applicant's arguments that Frei and Rapaport are not analogous arts, applicant's are reminded that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Rapaport and Frei are concerned with the use of dermatological active ingredients effective to activate fibroblast growth by stimulating fibrillar and interfibrillar components to promote skin rigidity, tones and elasticity and improve its condition. One of ordinary skill in striae distensae treatment art would have considered that studies and teachings in collagen fibers formation, elastin synthesis and glycosaminoglycan synthesis references such as Frei and Rapaport are relevant to the field of applicant's endeavor. Thus examiner views that the references are analogous arts and that the obviousness rejection in this case has been properly made.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Thursday, from 8:00AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1611